



## INTERIOR BOARD OF INDIAN APPEALS

George F. Gottschalk, Jr. v. Juneau Area Director, Bureau of Indian Affairs

30 IBIA 210 (02/25/1997)



## United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

GEORGE F. GOTTSCHALK, JR.,	: Order Affirming Decision
Appellant	:
	:
v.	:
	: Docket No. IBIA 96-55-A
JUNEAU AREA DIRECTOR,	:
BUREAU OF INDIAN AFFAIRS,	:
Appellee	: February 25, 1997

This is an appeal from a January 31, 1996, decision of the Juneau Area Director, Bureau of Indian Affairs (Area Director; BIA), declining to recognize appellant as President of the Native Village of Kanatak (Village). For the reasons discussed below, the Board affirms the Area Director's decision.

The Village is organized under the Indian Reorganization Act (IRA), 25 U.S.C. §§ 476, 477 (1994), 1/ and the Act of May 1, 1936, 25 U.S.C. § 473a. It has an IRA Constitution and an IRA Charter, both ratified on March 1, 1941. In the preamble to the Constitution, the Village members described themselves as "a group of Aleuts having the common bond of living together in the Village of Kanatak, Territory of Alaska." 2/

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1/ All further references to the United States Code are to the 1994 edition.

2/ Membership in the Village is governed by Article II of the Constitution, which provides:

"SECTION 1. First Members.) All persons whose names are on the list of native residents, made according to the Instructions of the Secretary of the Interior for organization in Alaska, shall be members of the Village.

"SEC. 2. Children of Members.) All children of any members shall be members of the Village.

"SEC. 3. Loss of Membership.) Any member may willingly give up his membership, or his membership may be taken away for good reason by the Village, or if he moves away from the Village, intending not to return, he shall lose his membership.

"SEC. 4. New Membership.) Any person who has lost his membership and any other native person may be made a member if he sets up a home in the Village.

"SEC. 5. Membership Rules.) The Village may make rules to govern membership, either for the purpose of carrying out this Article or covering membership matters not taken care of in this Article."

By the time the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1601, was enacted in 1971, the Village members had moved away from the Kanatak village site, apparently for economic reasons and because the local school had closed. See Mar. 22, 1995, Memorandum of Tribal Operations Officer, Anchorage Agency, BIA. See also D. Orth, Dictionary of Alaska Place Names 492 (1967), which states that the Kanatak site was all but abandoned in the 1950's after oil drilling ceased.

Presumably because of its lack of residents, Kanatak was not listed in ANCSA as a village eligible to incorporate and make land selections under the Act. See 43 U.S.C. § 1610(b)(1). Nor, evidently, did Kanatak otherwise qualify for land selections under the Act.

In 1976, Koniag, Inc., an ANCSA regional corporation, selected a 330-acre area, including the Kanatak site, under sec. 14(h)(1) of ANCSA, 43 U.S.C. § 1613(h)(1), as a historical place and/or cemetery site. The selection has not yet been conveyed to Koniag, Inc. At the present time, the area is administered as a part of the Becharof National Wildlife Refuge.

It appears that the Village's IRA government became inactive after the members moved away from the Kanatak site but that, sometime prior to 1993, descendants of the original members began to reactivate the government. In 1993, they asked BIA to recognize their Tribal Council and the President they had elected, Nick Shanigan, as the governing body of the Village. Although no formal letter of recognition is included in the record, it is clear from the BIA decisions at issue here that BIA recognizes the Tribal Council and President Shanigan as the present-day government of the Village.

On December 15, 1994, appellant and four other individuals <sup>3/</sup> held a meeting at the Kanatak site. At that time, they elected themselves officers and members of a Board of Directors for the Village. These individuals elected appellant President of the Board of Directors. None of the five individuals who participated in this meeting is considered by Shanigan or the Tribal Council to be a member of the Village. See Shanigan's Apr. 14, 1995, Letter to the Superintendent.

On March 16, 1995, appellant wrote to the Anchorage Agency, BIA, stating:

I have been directed by the Board to collect all pertinent information that [BIA] has concerning the [Village] and further to conduct any business necessary to make our I.R.A. Council a viable governmental entity pursuant to the Constitution and By-Laws of the [Village].

Upon receipt of this letter, Agency staff contacted Nick Shanigan, as well as Marlene Shanigan, the contact person for the Tribal Council, and advised them of appellant's request. On April 14, 1995, the Superintendent

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<sup>3/</sup> The others were: Paul C. Whiteberg, Gilbert M. Gottschalk, Charles A. Williams, and Fred M. Williams.

held a meeting, at which appellant, Nick Shanigan, Marlene Shanigan, and Agency staff members were present. Appellant contended that, under the Kanatak constitution, only residents of the Kanatak site could be members of the Village. He claimed that he was a resident and had been elected President by the other residents. After consulting with the Solicitor's Office, the Superintendent issued a decision on October 11, 1995. That decision stated:

Unfortunately, I must inform you [appellant] that [BIA] does not recognize you as the President of Kanatak's governing body, or even for that matter as a member of the tribe.

This determination is based on my evaluation of the stated basis of your claims of tribal membership and election to tribal office. During our meeting on March 14, 1995 and April 14, 1995 and on other occasions, you have stated unequivocally that the basis of your claim of tribal membership is residence. You have not claimed that you were a tribal member at the time that Kanatak organized in 1941 under the [IRA], or that you are descended from someone who was. Rather, you have claimed membership status based solely on your intermittent physical presence at the historic Kanatak village site, evidently reasoning that such physical presence automatically bestows membership status pursuant to Article II, Section 4 of the [Kanatak constitution], which reads as follows:

SEC. 4. New Membership. -- Any person who has lost his membership and any other native person may be made a member if he sets up a home in the village.

[BIA] does not agree with your conclusion that such constitutional provision operates to make you -- or anyone else claiming membership on similar grounds -- a tribal member.

There are two basic reasons why your residence-based claim must be rejected, either of which would be legally sufficient to support my decision not to recognize you as an officer of the [Village]. The first is that you are not in fact a bona fide resident. Although I am not informed as to precisely what the duration of your intermittent presences at the former village site may have been, I am satisfied that you have no legal right to reside at such location. \* \* \* So far as I am aware, you do not own any property in the area, and you have not received permission to reside there from the Fish and Wildlife Service, or from either of the two private landowners with holdings in the area, or from Koniag, Inc., which stands to receive title to some of the lands pursuant to Section 14(h)(1) of [ANCSA].

The second reason for my rejection of your claim of tribal membership on the basis of residence is that I believe it is premised on a mistaken interpretation of the constitutional provision quoted above. In my view, tribal membership does not accrue automatically upon the establishment of a residence in the village. Rather, the provision stating that a Native person who

sets up a home in the village "may be made a member" clearly implies that the existing membership or governing body must take some affirmative action to bestow such status on a new resident. If such resident does not desire to become a tribal member, or if the tribe chooses not to accept him as such, he does not necessarily become a member simply by virtue of establishing residence. So far as I am aware, you have not made application for membership to the pre-existing tribal governing body, and have not been accorded such status by the tribe.

Superintendent's Oct. 11, 1995, Decision at 1-2.

Appellant appealed the Superintendent's decision to the Area Director, contending, inter alia, that he had only asked the Superintendent for information, not for recognition of his status as a member or President of the Village. Appellant further contended that the Superintendent had acted outside his authority in making determinations concerning the Village's governing body.

On January 31, 1996, the Area Director issued the decision on appeal here. He remanded appellant's request for information to the Superintendent but urged appellant to be more specific as to what information he sought so that the Agency could respond properly. He then continued:

With regard to your assertion that the Superintendent has acted outside his authority or has otherwise acted improperly to determine legitimacy of tribal governments, we have found nothing to support the allegation. In fact, it is incumbent on [BIA] to figure out who the tribe is and who their authorized representatives are. As our line officer for the Anchorage Agency, it is one of the basic responsibilities of the Superintendent to determine and assure that we (BIA) are interacting with properly authorized, legitimate representatives of the tribes. Based upon our review of the information provided then, it is my determination that the Superintendent had acted properly and that his recognition of Mr. Nick Shanigan as the president of the [Village] is correct and is hereby upheld by this office. [Emphasis in original.]

Area Director's Jan. 31, 1996, Decision at 1.

On appeal to the Board, appellant contends:

[The Superintendent] has stated (and [the Area Director] upholds) that [BIA] recognizes Mr. Nick Shanigan as the President of the [Village]. Mr. Nick Shanigan is not a resident of Kanatak; further, [the Superintendent] has never divulged the criteria by which [BIA] can and has recognized Mr. Shanigan as President of Kanatak without being a resident of Kanatak. The converse is also true, [the Superintendent] has never shown the criteria by which he denies recognition of myself as resident and further as President of the [Village].

Appellant's Statement of Reasons at 2.

After this appeal was filed, appellant was convicted of violations of the National Wildlife Refuge Administration Act, 16 U.S.C. § 668 dd(c) and (e), with respect to his unauthorized entry, use, and occupation of the former Kanatak village site. Appellant was sentenced to two years probation and was made subject to the following special conditions of supervision:

That the defendant [i.e., appellant] remove the boat and stored fuel and scatter the timber that the boat is currently lodged on at the Kanatak site.

That the defendant remove his tools and personal items from the structures.

That the defendant dismantle the runway he has marked out.

That the defendant return logs to the beach where he has begun construction for a new structure.

Prior to entering the site to conduct cleanup, that the defendant notify the refuge of his plans to be on Becharof and let the refuge know his itinerary and the names of the people in his party.

That defendant not be permitted to enter the village of Kanatak for any purpose for two (2) years without the prior permission of the refuge manager. That defendant notify the refuge manager prior to entering either the Alaska peninsula or the Becharof National Wildlife Refuge to explain the purpose, location and duration of his stay.

Cleanup is to be completed no later than November 1, 1996.

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The Area Director contends that "[such criminal proceeding has some bearing on the appeal before the Board because it establishes that [appellant] is not a legal resident of the Village of Kanatak, even though his claim of Kanatak residence was the basis for his assertion of tribal membership status." Area Director's Notice of Judicial Determination at 1-2. Appellant does not dispute the Area Director's contention. Although he submits three short partial transcripts of his trial, he offers no analysis of these submissions.

The Board agrees with the Area Director that the judgment in United States v. Gottschalk establishes beyond dispute that appellant is not a resident of the Kanatak site. As far as the record shows, appellant has not claimed to be a member of the Village on any basis other than residence at the Kanatak site. Nor does he make such a claim in this appeal. As noted above, neither President Shanigan nor the Tribal Council considers appellant

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4/ On other documents in this case, the case number is shown as A96-0011 CR (JKS).

to be a member of the Village. <sup>5/</sup> Accordingly, the Board finds that BIA properly declined to recognize appellant as a member or President of the Village.

Appellant also challenges BIA's recognition of Nick Shanigan as President of the Village. Because appellant has not shown himself to be a member of the Village, the Board finds that he lacks standing here to challenge BIA's recognition of another individual as President of the Village.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. 4.1, the Area Director's January 31, 1996, decision is affirmed.

//original signed

Anita Vogt  
Administrative Judge

//original signed

Kathryn A. Lynn  
Chief Administrative Judge

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<sup>5/</sup> There is no specific statement in the record as to whether the Village has ever adopted membership rules under Art. II, sec. 5, of its Constitution. However, a document entitled "KANATAK TRIBAL ENROLLMENT, CURRENT LIST" suggests that, at the present time anyway, a person seeking membership in the Village must submit an application, and the application must be accepted, before the person becomes a member.